

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EUNICE RIVERA, et al.,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
DELTA AIR LINES, INC., et al.,	:	
Defendants.	:	NO. 97-CV-1130

MEMORANDUM ORDER

J. M. KELLY, J.

November , 1997

Presently before the Court is Plaintiffs' Motion for Reconsideration Of The September 26, 1997 Order By The Honorable James McGirr Kelly Granting Defendant City of Philadelphia's Motion to Dismiss ("Motion for Reconsideration"). Defendant City of Philadelphia ("the City") has filed a response. The background of this case, and the legal arguments raised here, are discussed fully in my September 26, 1997 Memorandum.

"[T]he purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985). A district court will grant a party's motion for reconsideration for any of three reasons: (1) the development of an intervening change in the law; (2) the emergence of new evidence not previously available, or (3) to correct a clear error of law or prevent manifest injustice. Cohen v. Austin, 869 F. Supp. 320, 321 (E.D. Pa. 1994).

Plaintiffs seek to revive their theory that the City is liable under the Americans with Disabilities Act because it

provides "significant assistance" to Defendant Delta Airlines, Inc. ("Delta"), in violation of 28 C.F.R. § 35.130 (1995), by acting as Delta's landlord. Plaintiffs argue that reconsideration is warranted because of the emergence of new evidence, namely a copy of the City-Delta lease. The City did not produce a copy of the lease until September 11, 1997. Plaintiffs claim that this "new evidence" shows that the City provides "significant assistance" to Delta.

The City-Delta lease is not "new evidence," it was produced to Plaintiffs' counsel fifteen days before this court issued its September 26, 1997 Order.¹ Further, the lease does not change my analysis. The lease does not show that the City had any involvement with Delta other than acting as its landlord.

Plaintiffs point out that the City-Delta lease prohibits discrimination on the basis of race, color or national origin, but does not prohibit discrimination on the basis of disability.² The Plaintiffs argue that this "lends the tacit, implied approval of the City, as landlord, to the aiding and/or perpetuating of a discriminatory policy of Defendant Delta Air Lines." Even if Plaintiffs' characterization of the lease is correct, "tacit, implied approval" is not "significant assistance."

Plaintiffs have not come forward with any new evidence, do

¹ Plaintiffs' counsel admits that a copy of a lease agreement between the City and another air carrier, that is substantively the same as the City-Delta lease, was produced well before September, 1997.

² The lease agreement was originally entered into by Delta and the City in 1974, 16 years before the passage of the ADA.

not cite an intervening change in controlling law and fail to point out any clear error of law or manifest injustice.

Therefore, after consideration of Plaintiffs' Motion for Reconsideration it is ORDERED that Plaintiffs' motion is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.